
Appeal Decision

Site visit made on 16 March 2021

by S Leonard BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 April 2021

Appeal Ref: APP/W1715/W/20/3262999

16 Keble Road, Chandlers Ford, SO53 3DS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr K Warren against Eastleigh Borough Council.
 - The application Ref F/19/85922, is dated 21 June 2019.
 - The development proposed is erection of 4no. four-bedroom detached dwellings with associated garages and hard and soft landscaping following demolition of existing bungalow.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The description of development in the banner heading above is taken from the appellant's appeal form and the Council's appeal statement. It more accurately describes the proposal than the description on the application form, since the scheme was amended as part of the determination of the application in order to address some of the concerns raised by the Council, including a reduction in the number of proposed dwellings from 5 to 4 and alterations to the site layout.

Main Issues

3. The Council's appeal statement, Officer's Committee Report and a decision notice which was issued in error by the Council, confirm the Council's reasons for refusal, had the application been determined prior to the submission of the appeal.
4. Accordingly, the main issues are:
 - Whether the proposal would make adequate provision for the collection of domestic waste and recycling, having regard to highway safety and the character and appearance of the area; and
 - Whether the proposal provides adequate mitigation for the Solent and Southampton Water Special Protection Area (SPA).

Reasons

Waste and recycling collection

5. The appeal site is located behind several properties on the south side of Keble Road, within an established suburban residential area. It is occupied by a detached single storey dwelling, which is currently unoccupied, and the garden is overgrown. Vehicular access is from Keble Road, via an unmade track which runs between Nos. 12 and 18. The site is surrounded by residential properties in Keble Road and The Crossways onto which the southern site boundary fronts.
6. The combined long length and narrow width of the access road and limited on-site turning facilities within the proposed development means that safe refuse collection from the site by the Council's standard refuse collection vehicles would not be possible. Furthermore, having regard to the requirement to store up to 8 bins for dual refuse collections, the access width is insufficient to allow for the provision of a bin collection point for kerbside refuse collection by the Local Authority contractor, without blocking either the access road or the adjacent public footway.
7. As such, the Council's opinion is that kerbside collection would impede visibility for users of the access road and pedestrians using Keble Road, thereby impacting on highway safety. Also, that any longer-term presence of bins on the highway beyond that necessary for collection, would have an adverse impact on the character and appearance of the street scene. These impacts are not disputed by the appellant, and, following my site inspection, I share these concerns, having regard to the need to position bins awaiting collection on the pedestrian footway or grass verge near the access entrance.
8. The proposal is for refuse collection to take place from within the site, utilising a third-party private contractor, with the details and implementation of the scheme being secured via a planning condition. In support of this approach, the appellant has submitted a Swept Path Diagram to demonstrate that a 7.5T, 8.0m long refuse collection vehicle could enter, turn on site and leave in forward gear. Evidence has also been provided of the existence of private waste collection companies within the locality of the appeal site.
9. I share the Council's concerns that such a condition would not be reasonable or enforceable, given the potential for future occupants of the development to decide not to appoint a private waste collection service and to reasonably request that the Council collect the waste, having regard to the Council's duty under Section 45 (1) of the Environmental Protection Act 1990 (the EPA).
10. Although the Council has accepted that the access and development layout would preclude access and waste collection from the site by the Council's current refuse collection vehicles, and that an alternative Council waste and recycling collection service using smaller vehicles would not be possible at this time due to non-availability of sufficient staff, I am not persuaded that this in itself would be sufficient to absolve the Council from its statutory duty under the EPA, in respect of the exemptions contained in Section 45 (1) (a) (i) and (ii), since the site, given its location within an established residential area, is not by its nature inherently inaccessible.
11. The appellant has referred me to other appeal decisions where refuse collection by a private contractor in respect of new residential development has been accepted as appropriate. I must determine the appeal on the basis of the appeal site circumstances and the merits of the appeal proposal before me.

12. Also, I note that the circumstances of these cases differ from that of the current appeal, including that the instances in which a planning condition was deemed to be an acceptable means of dealing with this matter related to blocks of flats and student accommodation. Furthermore, in the case of one of the examples cited, the appellant had submitted a detailed waste collection strategy, to be implemented by a named private contractor, together with a back-up option, and with compliance with the approved scheme to be secured by means of a completed Unilateral Undertaking.
13. In the absence of more precise details from the appellant in respect of the proposed private contractor collection arrangements for the current appeal scheme, and more certainty regarding the private contractor and how such a scheme would be secured and maintained by the future occupants of the proposed 4 individual dwellings, I find that there is insufficient evidence before me to satisfactorily demonstrate that the potential for kerbside collection by the Council would be avoided. As such, I am not satisfied that this matter can be dealt with by a condition on the basis of the information before me.
14. For the above reasons, I am unable to conclude that the proposal would make adequate provision for the collection of domestic waste and recycling, having regard to highway safety and the character and appearance of the area. As such, the proposal would fail to accord with Saved Policies 28.ES, 59.BE and 102.T of the *Eastleigh Borough Local Plan Review 2001-2011* (2006) and Emerging Policies DM1 and DM13 of the Submitted *Eastleigh Borough Local Plan 2016-2036* (2018). These policies, amongst other things, require new development to make provision in the design and layout for the storage and collection of domestic waste and recyclable materials, not cause or increase danger to road users, and not have an unacceptable impact on the character and appearance of urban areas.

SPA

15. The Council's second reason for refusal, had the application been determined, relates to adverse effects upon the integrity of the Solent and Southampton Water SPA arising from the appeal proposal in combination with other plans and projects. This is as a result of nutrients, including phosphates and nitrates from domestic wastewater associated with the additional dwellings entering the water and resulting in eutrophication. The appellant has agreed to make a financial contribution in accordance with the Council's adopted nitrate mitigation strategy, which involves removing agricultural land from a Council land holding at Horton heath, to off-set the nitrogen that would be generated by the proposal. However, this payment has not yet been secured through the planning application or the appeal process, and such payment remains unsecured.
16. Had I been minded to allow the appeal, and the circumstances therefore existed in which planning permission could be granted, as the competent authority, it would have been necessary for me to examine this matter further and to undertake an Appropriate Assessment (AA) under the Conservation of Habitats and Species Regulations 2017, of the implications of the appeal scheme for the European Protected Sites. However, since I find the proposal to be unacceptable in respect of the first main issue, the outcome of any such AA would have no bearing on the overall outcome of this appeal. There is therefore no need for me to consider this matter any further as part of my decision.

Conclusion

17. When judged against some of the core planning principles of the Framework, the appeal proposal would perform well in that it would be in an urban area where access to facilities is likely to be greatest. Also, there would be a small social benefit in providing 3 additional housing units, and economic benefits as a result of the construction and occupation of the new houses. However, such benefits would not outweigh or justify the harm I have identified above.
18. For the above reasons, I conclude that the appeal should be dismissed.

S Leonard

INSPECTOR